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Transcript of **Brian Wynn (Vol.II)**

May 19, 2017

Jawanza Smith, et al. v. Ideal Towing, LLC , et al.

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Atlanta, GA

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1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4
5 JAWANZA SMITH, CARLO BURNEY, BRIAN :
6 WYNN, CARLTON LEWIS and STANLEY :
7 HILL, :

8 Plaintiffs, CIVIL ACTION FILE NUMBER:
9 versus 1:16-cv-01359-TWT

10 IDEAL TOWING, LLC; MICHAEL JAMES :
11 and TISHJA JAMES, :
12 Defendants. :

13
14 DEPOSITION OF BRIAN WYNN
15 VOLUME II
16 10:15 a.m.
17 May 19, 2017

18
19 DeLong Caldwell Bridgers Fitzpatrick & Benjamin
20 3100 Centennial Tower
21 101 Marietta Street
22 Atlanta, Georgia

23
24 Susan DeCarlo, RPR, CCR No. B-2125
25

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2

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24 Also Present: Tishja James

25

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1 (Friday, May 19, 2017 10:15 a.m.)

2 BRIAN WYNN,

3 called as a witness at the instance of the
4 Defendants, being first duly sworn, was examined
5 and deposed as follows:

6 MR. MAHONEY: This will be the
7 continued deposition of Brian Wynn. Can you
8 please state your name for the record?

9 THE WITNESS: Brian Wynn.

10 EXAMINATION

11 BY MR. MAHONEY:

12 Q. Now, I understand that you already
13 went over the ground rules for depositions the
14 last time you were here, correct?

15 A. Yes, sir.

16 Q. Are you on any medications today?

17 A. No.

18 Q. When did you learn about this
19 deposition for today specifically?

20 A. About two days ago.

21 Q. Okay. In the last two days did you
22 review any documents?

23 A. No, I didn't.

24 Q. Did you speak to anyone other than
25 your attorneys?

1 A. No.

2 Q. I am going to ask you a little bit
3 about the family members that live in the Atlanta
4 Metro area. The reason why I do that is because
5 should this matter proceed to trial we like to be
6 able to keep those family members off the jury.
7 Did you already discuss that in your prior
8 deposition?

9 A. No.

10 Q. All right. Can you please tell me
11 all your family members that live in the Metro
12 Atlanta area, north of Macon preferably?

13 A. Bruce Wynn II, my brother; his
14 wife, Michelle Wynn; and Liz and James Herbert.
15 And that's it for family.

16 Q. What is your current residence?

17 A. 1639 Trinity Avenue, Southwest,
18 Atlanta, Georgia.

19 Q. That is right down the street,
20 isn't it?

21 A. Uh-huh.

22 Q. And what was your residence at the
23 time --

24 A. I'm sorry 169.

25 Q. 169. What was your residence at

1 the time you worked for Ideal?

2 A. I moved a couple of times when I
3 worked with Ideal, but 1055 Lancashire Circle,
4 Stone Mountain, Georgia. And I forgot the
5 address when I stayed with a buddy, but it was in
6 Lithonia.

7 Q. And can you give me the dates that
8 you lived at 1055 Lancashire Circle?

9 A. I lived there from approximately
10 the beginning of February 2015 to about February
11 2016.

12 Q. And prior to that where did you
13 live?

14 A. I lived in Lithonia. I forget the
15 address. I was just staying with a friend.

16 Q. So you lived in Lithonia?

17 A. It was off Evans Mill Road.

18 Q. And you lived on Evans Mill Road
19 prior to moving to Lancashire Circle?

20 A. Yes.

21 Q. And what were the dates that you
22 lived at Evans Mill Road?

23 A. I believe that was from -- I
24 believe it was like -- it was not that long. I
25 believe that it was the beginning of 2014 until

1 February of 2015.

2 Q. Who is your current employer?

3 A. I work with Pacesetter Personnel
4 Service.

5 Q. Do you work in an office?

6 A. No.

7 Q. Are you able to work from home?

8 A. No.

9 Q. Where is Pacesetter located?

10 A. Doraville, Georgia.

11 Q. What do you do there?

12 A. Construction, forklift driving.

13 Q. Do you require a special license to
14 operate a forklift?

15 A. Yes, a certification.

16 Q. And what is that certification
17 called?

18 A. Industrial motorized equipment
19 certification, I believe. Yeah, powered
20 industrial trucks.

21 Q. And when you complete that
22 certification, do they give you a card?

23 A. Yes.

24 Q. When did you complete that
25 certification?

1 A. I completed that certification
2 March 2017.

3 Q. My understanding is that you worked
4 in construction prior to working with Ideal; is
5 that correct?

6 A. No.

7 Q. Did you work at any other tow truck
8 companies prior to working at Ideal?

9 A. I worked for a company that did
10 towing, but I did not do towing with any other
11 company.

12 Q. And what was the name of that
13 company?

14 A. V&S. Just all I know is V&S.

15 Q. Okay. What was your occupation at
16 the time you worked for Ideal Towing?

17 A. Tow truck driver.

18 Q. Did Ideal Towing ever provide you
19 with business cards?

20 A. No.

21 Q. Did you ever see business cards for
22 Ideal Towing?

23 A. For Ideal Towing?

24 Q. Yes.

25 A. I'm sorry, allow me to correct

1 myself with that last question. They never
2 provided me with my own business cards.

3 Q. Okay.

4 A. But there was a time they handed
5 out their business cards for us to hand out to
6 customers.

7 Q. Okay. So they provided you with
8 business cards, but not your own personalized
9 ones?

10 A. No.

11 Q. Did it have a space on it where you
12 could fill in your name?

13 A. I don't remember.

14 Q. Did you have to pay for those
15 business cards?

16 A. No.

17 Q. Whose name appeared on the business
18 card?

19 A. Ideal Towing.

20 Q. Did their address appear on the
21 business card?

22 A. I am not certain.

23 Q. Whose phone number was on the
24 business card?

25 A. Ideal Towing's phone number.

1 Q. How many business cards did you
2 receive while you worked for Ideal Towing?

3 A. I am not certain. It was like a
4 small stack, you know, enough to pass out to my
5 customers for a few days.

6 Q. Do you have any social media
7 accounts or profiles?

8 A. Yes.

9 Q. What do you have?

10 A. Instagram, Facebook and hi5.

11 Q. Do you put photos on any of those
12 social media profiles?

13 A. Yeah.

14 Q. Do any of them have a tow truck in
15 the picture as well?

16 A. I believe one has a picture inside
17 a tow truck.

18 Q. Inside a tow truck. Is that on
19 Facebook?

20 A. No, I think that that is on hi5.

21 Q. Okay. What kind of profile is hi5?

22 A. It's like a -- it's a social media
23 site, meet people, more like a dating site.

24 Q. So it's more for like personal
25 communication?

1 A. Yeah.

2 Q. You have never got a customer off
3 of hi5 before?

4 A. No.

5 Q. How about Instagram?

6 A. No.

7 Q. How about Facebook?

8 A. No.

9 Q. Other than business cards and
10 social media, are there any other ways that you
11 advertise yourself professionally?

12 A. Myself?

13 MR. BENJAMIN: Object to the form.

14 BY MR. MAHONEY:

15 Q. Yes.

16 A. No.

17 Q. Were people aware that you were a
18 tow truck driver at the time you worked at Ideal
19 Towing?

20 A. Just anybody that saw me in the
21 uniform or in the tow truck.

22 Q. Okay. What was your routine on a
23 workday at Ideal Towing?

24 A. Arrived there, wait for a truck to
25 be available, inspect the truck, get my tablet,

1 and go to the gas station to fuel up, log in.
2 And we would take the first call -- I mean, take
3 the call that comes in as soon as I log in or
4 wait for a call.

5 Q. You did not use the same truck
6 every day?

7 A. No, not every day.

8 Q. How many different trucks did you
9 use?

10 A. However many different trucks that
11 they had. At some point in time I used almost
12 every flatbed. I never drove the wheel lift.

13 Q. And you inspected all these trucks?

14 A. Yes, I did a walk-through.

15 Q. So you went to the gas station
16 prior to logging in?

17 A. Usually I would log in first, but
18 it would be somewhere between arriving at, like,
19 getting in the truck and fueling it up.

20 Q. So you might log in while at the
21 gas station?

22 A. I might.

23 Q. What kind of tablet did you have?

24 A. I believe it was a Samsung.

25 Q. Did you ever use a DDS while you

1 worked at Ideal Towing?

2 A. A DDS?

3 Q. Yes.

4 A. What is that?

5 Q. Do you know what a DDS is?

6 A. No. I am not a dentist.

7 Q. How are drivers selected by your
8 Samsung tablet?

9 A. I -- how are they selected?

10 Q. Yes.

11 A. I don't know. That was all done
12 either through AAA or through the dispatch.

13 Q. Did it have a function to accept
14 calls on it?

15 A. I am not sure what you mean.
16 Telephone calls or tow calls?

17 Q. Tow calls.

18 A. Yes.

19 Q. Did it have a function to reject
20 calls on it?

21 A. No, not to my knowledge.

22 Q. So on the tablet when a call came
23 in, what would the screen prompt you?

24 A. To accept.

25 Q. So there is just one button for

1 accept?

2 A. To the best of my knowledge -- the
3 best of my remembering I believe -- I am not
4 sure. I did not reject many calls, so --

5 Q. But did you have an option to --
6 there was a reject button or not?

7 A. I don't know.

8 Q. Okay. You said that you did not
9 reject many calls?

10 A. No, if I needed to reject a call, I
11 would call the shop.

12 Q. How long did you use the Samsung
13 tablet?

14 A. The whole time I was employed at
15 Ideal Towing.

16 Q. So it was over two years?

17 A. I was not with Ideal Towing for two
18 years.

19 Q. It was over a year?

20 A. Yes.

21 Q. Were there any rules for what you
22 could do while waiting for the calls?

23 A. Yes.

24 Q. What were they?

25 A. Not to go outside of the territory.

1 To run the calls -- you said while waiting for a
2 call?

3 Q. Yes.

4 A. Pretty much not to go outside of
5 the territory and not to do anything in the truck
6 that misrepresents the company.

7 Q. And what does misrepresent mean?

8 A. Make the company look bad.

9 Q. Was that explained to you?

10 A. Things as they pop up from actions
11 of other drivers, you know, we have meetings and,
12 you know, guys don't do this, don't do that.

13 Q. Did you have to be sober and ready
14 to accept calls while you were waiting?

15 A. Yes.

16 Q. If you were sober and ready to
17 accept a call, could you eat while waiting?

18 A. Yes.

19 Q. Could you go to the store and grab
20 a drink while waiting?

21 A. As long as you could be ready to
22 move on the call within a couple of minutes, you
23 know.

24 Q. So you could do that as long as you
25 were ready to accept the call?

1 A. Yeah, whatever you do is limited to
2 how quickly you could get to the truck and move
3 on the call.

4 Q. Okay. Could you use a cell phone
5 while you were waiting on a call?

6 A. Yes, you could.

7 Q. Could you listen to the radio while
8 you were waiting on a call?

9 A. Uh-huh.

10 Q. Could you watch TV?

11 A. Yes. Yes to both.

12 Q. Could you take a nap?

13 A. Yes.

14 Q. What was your designated area at
15 the time you were working at Ideal Towing? And
16 start at the first designated area you had.

17 A. I believe the territory ran from --
18 like where did it go to? Far north, just south
19 like Dunwoody, but east of 85 and down towards
20 I-20. Nothing much past I-20. South past I-20,
21 all the way east towards all of Lithonia, Stone
22 Mountain and the Decatur area, going around the
23 eastern perimeter of the city, so pretty much
24 west of 85 down to I-20 East as far east as
25 Lithonia.

1 Q. Did it ever change while you worked
2 at Ideal Towing?

3 A. Yes, it did.

4 Q. When?

5 A. I am not sure when.

6 Q. What was your new designated area?

7 A. It was pretty much the same area
8 minus the northern part of the city that we had,
9 so, you know -- except for the north Atlanta,
10 part of that territory.

11 Q. Do you know why that territory was
12 lost?

13 A. I believe they lost the contract
14 for it. I am not -- I can't be certain though.
15 That was, you know, a rumor, talk.

16 Q. And you don't know when that change
17 occurred? Do you know what year?

18 A. No. I think that it happened in
19 2015. I can't be certain.

20 Q. Could you stop at home while you
21 were waiting for a call?

22 A. You could. It was kind of frowned
23 upon though.

24 Q. By who?

25 A. Management.

1 Q. Okay. How would they know that you
2 stopped at home?

3 A. They have you on GPS so they could
4 see you if they are watching.

5 Q. And were there ever any locations
6 where tow truck drivers would meet up together
7 during the day?

8 A. At a gas station where we fuel up.

9 Q. Anywhere else?

10 A. I did not meet too much with
11 drivers. Some drivers may have had, you know,
12 friendships and different spots that they met. I
13 am not certain.

14 Q. Were there any driver's houses
15 where other drivers would meet up with the tow
16 trucks?

17 A. I would not know because I did not
18 meet up at anybody's house.

19 Q. If you did not get a call for,
20 let's say, two hours, could you eat dinner?

21 A. Well, it was like the answer to the
22 last question and a few questions before. You
23 could eat as long as you could move on a call.
24 You never know when the call is coming, so it's
25 not like you can go order a meal and sit down at

1 a restaurant, you know, you got to be ready for
2 the next call.

3 Q. Did you ever eat at home while you
4 were waiting on a call?

5 A. I am sure I have.

6 Q. Did you ever sleep at home while
7 you were waiting for a call?

8 A. Probably.

9 Q. Were you ever allowed to keep the
10 truck overnight?

11 A. Was I? I was a few times, yeah.

12 Q. Were you ever able to run an errand
13 while you were waiting on a call?

14 A. You could do whatever as long as
15 you are ready to move on the call within two
16 minutes.

17 Q. Can you give me an example of an
18 errand that you were able to run while you were
19 waiting on the call?

20 A. Pick up a prescription, drop a
21 movie off at Netflix -- not Netflix, Redbox.

22 Q. How many tows were you required to
23 perform in a day?

24 A. As many that hit your box.

25 Q. Was there a quota that if you fell

1 under it you would be disciplined?

2 A. No. There was -- no, there was no
3 quota.

4 Q. What is the least amount of tow
5 jobs that you have done in a day --

6 A. Oh --

7 Q. -- while on duty?

8 A. On a day? I don't think I had any
9 that were zero, but one. I definitely had a few
10 one days.

11 Q. And at some duration in your
12 employment with Ideal Towing you were paid a set
13 amount of dollars per call; is that correct?

14 A. That's -- that's what I was told.
15 Now, the set amount of dollars was supposed to be
16 a percentage, from my understanding, it was
17 supposed to be a percentage of what the company
18 was getting paid for AAA to run the call. I am
19 not sure of that.

20 Q. So I understand that there is
21 commission-based pay but there was also a time
22 where you were paid a flat fee plus a certain
23 dollar amount for the calls that you received; is
24 that correct?

25 A. Yeah, there was a time like that.

1 Right.

2 Q. Okay. During that time period
3 where you were receiving a set dollar amount for
4 calls, do you know on average how many calls you
5 received per day?

6 A. At -- at the time that happened, I
7 believe I was working night shift and I probably
8 would average maybe five to six a night.

9 Q. Did you prefer night shift?

10 A. It depends on what I had going on
11 at the time.

12 Q. At that time did you prefer night
13 shift or would you have preferred to work day
14 shift?

15 A. At that time, because that is when
16 I started, I was just -- I just wanted to work,
17 so it did not matter.

18 Q. What does loading a vehicle on to
19 the truck entail?

20 A. Well, after you position your truck
21 either in front or behind the vehicle, you lower
22 your bed, release tension on the cable, release
23 the hook on the cable so that you could pull the
24 cable out. You would hook the cable up to the
25 proper hook points on the vehicle, put the

1 vehicle in neutral and reengage the lock on the
2 cable and winch it on to the bed, put the vehicle
3 in park, strap down the tires, put your bed up
4 and you are ready to roll.

5 Q. Is there anything that could make
6 this process take longer?

7 A. Oh, yeah, any number of things.

8 Q. What was the average amount of time
9 it took to do this process?

10 A. It depends on the circumstances,
11 the scenario. But I mean, a driver could do it
12 anywhere between, you know, seven, eight minutes,
13 you know, five to seven minutes or it could take
14 as long as -- I have seen them take as long as an
15 hour sometimes depending on the situation.

16 Q. So what kind of situation could
17 lead it to taking an hour?

18 A. Inclement weather, terrain,
19 condition of the vehicle, condition of the
20 equipment on the truck. If the member is there,
21 the customer is there.

22 Q. What does the customer being there,
23 how does that affect it?

24 A. Usually you have to -- the customer
25 has to be present usually and/or you may need

1 them to have access to the keys to get access to
2 inside the vehicle in to the ignition and to
3 verify their AAA membership.

4 Q. What about a luxury car, one that
5 is low to the ground, does that take longer to
6 tow?

7 A. There is extra steps involved with
8 that.

9 Q. Can you tell me what the extra
10 steps are?

11 A. You have to put boards down where
12 the tires would go on to the bed kind of like a
13 ramp onto the bed because the vehicle sits so low
14 as it approaches the ramp -- as it approaches the
15 bed at that angle it may scratch the front and
16 the back of the vehicle, the front bottom bumper
17 or the back bumper so you put the boards down to
18 kind of give it extra incline so it does not
19 touch.

20 Q. How did you learn this process?

21 A. Other drivers I worked with that
22 trained me.

23 Q. Can you name one of the drivers?

24 A. Ernest -- I forget Ernest's last
25 name -- and -- Ernest.

1 Q. Do you know what year you learned
2 that?

3 A. 2014, I believe.

4 Q. If damage was done to the car like
5 you described, who would be responsible for that?

6 A. The driver.

7 Q. Were there instances of when you
8 could help a customer without towing their car?

9 A. Yes.

10 Q. If they were locked out?

11 A. If you had the equipment.

12 Q. Okay. Did you have the equipment
13 while you worked at Ideal?

14 A. I did at one point.

15 Q. Okay. When did you have the
16 lockout kit equipment?

17 A. The first few months of my
18 employment at Ideal.

19 Q. Who provided that tool to you?

20 A. I already had it.

21 Q. What happened to it?

22 A. It was stolen out of the truck I
23 used the night before, probably by another
24 driver.

25 Q. What did you do after it was

1 stolen? Did you ever get a new one?

2 A. No.

3 Q. How about a jump box, did you have
4 one of those?

5 A. Yes.

6 Q. For the entire duration?

7 A. I did, but it was not very good.

8 Q. Okay. And who provided that?

9 A. I did.

10 Q. Did you buy a new one or did you
11 already have it?

12 A. I already had it.

13 Q. How about wrenches?

14 A. I did not have a wrench, but they
15 were usually on the truck.

16 Q. Drills?

17 A. No.

18 Q. Flashlight?

19 A. Yes.

20 Q. And whose flashlight was it that
21 you used?

22 A. It was my flashlight.

23 Q. Did you buy a new one or did you
24 already have it?

25 A. I bought several flashlights.

1 Q. Why did you need so many?

2 A. Because they would fall and break.

3 Q. When you first started working at
4 Ideal did you already have a flashlight?

5 A. Yes.

6 Q. And then you would buy new ones
7 when they broke?

8 A. Yes.

9 Q. Were there any other tools that you
10 owned that you used while you worked at Ideal?

11 A. No. Gloves, pens and stuff.

12 Q. And these were things that you
13 already owned prior to working there?

14 A. Yes.

15 Q. So working at Ideal Towing you
16 helped some customers that were locked out
17 without towing their car?

18 A. Yes.

19 Q. Did you help them change their
20 tires?

21 A. Yes, I have done that too.

22 Q. Did you help them if they needed a
23 jump?

24 A. Yes.

25 Q. How did the customer pay in those

1 instances?

2 A. It would count as a AAA call.

3 Q. Was there any time while you worked
4 at Ideal where you were no longer able to do
5 these light service jobs?

6 A. I mean, if I did not have the
7 equipment on me.

8 Q. Okay. And when did you learn how
9 to perform those light service skills?

10 A. The previous jobs.

11 Q. What do you do with the vehicle
12 once it was loaded on to the truck?

13 A. I would put the destination, the
14 tow destination in the GPS and take it.

15 Q. Were you able to leave the
16 designated area?

17 A. To deliver a vehicle?

18 Q. Yes.

19 A. Yeah.

20 Q. Where is the farthest you had to
21 take a vehicle to deliver it?

22 A. The farthest?

23 Q. Yes.

24 A. Probably Tuskegee, Alabama.

25 Q. And did the customer ride with you

1 when you went there?

2 A. No.

3 Q. Was there ever a time when a
4 customer rode with you out of state?

5 A. No. I only went out of state a
6 couple of times. I believe so, yes.

7 Q. What other states did you drive to?

8 A. South Carolina.

9 Q. Any others?

10 A. Alabama, South Carolina, that's it.

11 Q. What did you do after you dropped
12 the vehicle off?

13 A. If I needed to collect any payment
14 from the customer, I would collect payment from
15 the customer, wished them well and headed back to
16 the designated area.

17 Q. Could you receive calls while you
18 were out of the designated area?

19 A. Yes, it has happened, could happen.

20 Q. And would the calls be for
21 somewhere near the truck or would it be in the
22 designated area?

23 A. The incoming calls would be in the
24 designated area, so that was the pickup area,
25 that is why we needed to stay in that area

1 because that is where the majority of our calls
2 would come from in that area.

3 Q. So you would sometimes receive a
4 call while out of the designated area to do a job
5 inside the designated area?

6 A. Pick up inside the designated area,
7 yes.

8 Q. To your understanding, why would
9 that occur?

10 A. Other drivers may still be on a
11 call, they may have just picked up a car and had
12 to travel 15 miles to drop it off and then get
13 back. I may have just dropped off a call, be on
14 my way back to the designated area, pretty much
15 based on availability and how quickly a driver
16 can get to a customer.

17 Q. So would the proximity to the job
18 play a factor?

19 A. I would assume. But I -- you know,
20 I would think so, yes. I would think so. I am
21 not certain. I would just venture.

22 Q. Right. And I think that you talked
23 about this at your prior deposition, but neither
24 your attorney or me want you to speculate as to
25 things, but if you believe -- and if you have

1 reasons to believe something is factually true,
2 such as proximity determined whether or not you
3 received a call, then you can answer as to that.
4 But I definitely do not want you to speculate.

5 A. Yeah, I do not want to speculate.
6 It would make sense for that to happen, but I
7 would not know.

8 Q. To your knowledge who was sending
9 you the calls?

10 A. AAA had a system -- I believe -- to
11 my knowledge there was a AAA -- it was that AAA
12 would send the call to the nearest available
13 driver and we also had a dispatcher at the shop
14 who could then more or less cherry-pick the calls
15 to which driver was best suited for it or
16 whatever other knowledge they had about the
17 situation that would make them take the call and
18 pick the driver.

19 Q. Were there times when you would
20 receive a call and then the dispatcher from the
21 shop would try and change it?

22 A. Yes, that has happened.

23 Q. Did you dislike those types of
24 situations?

25 A. Sometimes.

1 Q. And why is that?

2 A. Because we got paid per call, so
3 sometimes it felt like taking money out of my
4 pocket and sometimes they had a good reason, a
5 good explanation.

6 Q. Is the reason why you did not
7 reject calls because you wanted to make more
8 money so you accepted more calls?

9 A. Yes.

10 Q. So you testified that you served
11 AAA customers?

12 A. Yes.

13 Q. Were there other types of customers
14 that you served while working at Ideal Towing?

15 A. Yes, we had -- Ideal had a contract
16 at one point with a company by the name of Jerald
17 and, you know, every once in a while there would
18 be a private call, somebody just call directly to
19 the company.

20 Q. Did you personally ever receive a
21 private call?

22 A. I have had some dispatched to me
23 from the office.

24 Q. Did you ever call the office and
25 tell them that you had a private call that you

1 wanted to do?

2 A. No, I did not solicit calls.

3 Q. Did anyone ever hail you down on
4 the road?

5 A. Oh, a lot of people tried to hail
6 me down.

7 Q. And what did you do in that
8 situation?

9 A. I would stop. I would talk to
10 them, you know, tell them the prices and see if
11 they wanted to go through with it or not.

12 Q. And that would put more money in
13 your pocket if they did decide to go through with
14 it, right?

15 A. Yeah, I believe -- I believe you
16 got a bigger percentage for a private call.

17 Q. What was that percentage?

18 A. I believe that it was still 30
19 percent, but the cost to the customer was higher
20 because they weren't in the AAA network.

21 Q. So would you agree with me that
22 handing out the business cards could result in
23 you getting paid more because those individuals
24 would then call and you would get a higher
25 percentage because they would not have a AAA

1 discount?

2 MR. BENJAMIN: Object to the form.

3 THE WITNESS: It could.

4 BY MR. MAHONEY:

5 Q. What incentive did you have to hand
6 out the business cards?

7 A. Make my boss happy.

8 Q. And how would the boss become happy
9 if you handed out a business card?

10 A. Promoting their business.

11 Q. How would they know you promoted
12 it?

13 A. Just seeing the results.

14 Q. Can you explain what the result
15 would be that would make the boss happy?

16 A. Well, if you promote the business
17 more, you get more business and I would assume
18 that would make them happy.

19 Q. But they would not know that you
20 were the one that promoted it, would they?

21 A. No.

22 Q. Were you paid more to hand out the
23 business cards?

24 A. No.

25 Q. And now your name would not appear

1 on the business card that you handed out to them,
2 would it?

3 A. My name wouldn't.

4 Q. Could a private individual request
5 a tire changed?

6 A. Yes, they could.

7 Q. Jump start?

8 A. Yes.

9 Q. Lock-out assistance?

10 A. Yes.

11 Q. Did you ever do those things?

12 A. For a private individual?

13 Q. Yes.

14 A. Not dispatched -- not that was not
15 dispatched from the office.

16 Q. Why wasn't it dispatched from the
17 office?

18 A. No, I have not done one of those
19 services for somebody who was not dispatched from
20 the office.

21 Q. Thanks for clarifying that.

22 A. Uh-huh.

23 Q. So every private individual that
24 hailed you down while you were driving actually
25 needed their car towed?

1 A. Not necessarily. Many needed a
2 tire change. They may have locked their keys in
3 the car, jump-start.

4 Q. So what did you do in that
5 situation?

6 A. I would tell them the price.

7 Q. Did any of them ever request a
8 light service job?

9 A. No. No. I mean, they -- they --
10 the -- I tell them the price and a lot of times
11 they figured that they could get it cheaper or
12 wait for somebody else to come and help them.

13 Q. What were the prices?

14 A. To be honest with you, I forget.

15 Q. Okay. When a customer's car has
16 issues, what is your understanding of the process
17 they go through? What do they call, the company,
18 AAA?

19 A. From my understanding, if they are
20 a AAA member, they would call AAA.

21 Q. And then what happens?

22 A. To my understanding, the call would
23 go to AAA, AAA would ask them their information
24 where they are at, designate it to wherever
25 the -- send the call to wherever the designated

1 AAA provider is in that area. If it were Ideal
2 Towing, their system would choose the nearest
3 available driver to service that client.

4 Q. And you mean Ideal's towing system
5 or their system?

6 A. I believe the AAA system. With
7 Ideal's dispatcher, you know, having the -- I
8 guess the final say in which driver takes the
9 call.

10 Q. So Ideal's dispatcher can
11 intervene?

12 A. Yes.

13 Q. Did Michael James handle the
14 day-to-day operations at Ideal Towing?

15 A. From where I sat it seemed no.

16 Q. Okay. Did Tishja James handle
17 clerical matters at Ideal Towing?

18 A. From where I sat, yes. From where
19 I sat, Michael James was definitely involved, a
20 part, had a say --

21 Q. Okay.

22 A. -- but it looked to me as though
23 Tishja ran more of the hands-on everyday
24 decision-making on that.

25 Q. What kind of decisions had to be

1 made?

2 A. Payroll decisions, disciplinary
3 decisions, you know, that's from my experience.

4 Q. From where you sat?

5 A. From where I sat in my dealings,
6 but it's -- it seemed and appeared to me like
7 everything, like -- like, you know, the boss.

8 Q. Okay. So payroll decision and
9 discipline decisions?

10 A. In my dealings, not just that. If
11 there was damages and it had to come out of a
12 driver's check, Tishja would be the one to, you
13 know, set the price, how it was going to come out
14 of the check, in what increments, scheduling. A
15 lot of times if a driver had a problem with
16 another driver or some other staff member, you
17 know, the mediator, that the --

18 Q. So she mediated issues between the
19 drivers?

20 A. Yeah, between drivers and staff,
21 you know, like the decider.

22 Q. As you sit here today, do you know
23 whether or not Michael James had to approve her
24 decisions?

25 A. I did not know. You know, it

1 definitely seemed like a partnership, so it would
2 appear that -- you know, I can't be certain. I
3 did not sit in on their meetings, but it would
4 seem like there would have to be some type of
5 agreement or consensus or something.

6 Q. And from where you sat, you seen --
7 it seemed that he was involved and he had a
8 partner?

9 A. Oh, definitely. It appeared to be
10 a partnership.

11 Q. If Michael James said that he had
12 to approve all payroll decisions, would you have
13 any way to dispute that?

14 A. Would I have any way to dispute it?

15 Q. Yes.

16 A. If he said it now or then?

17 Q. If he said it now.

18 A. The only thing I would say is that
19 I never dealt with him for payroll. I only dealt
20 with Tishja for payroll.

21 Q. Okay. And that's it? Anything
22 else?

23 A. I only dealt with Tishja for
24 payroll. I never dealt with him for payroll.

25 Q. If Michael James said that all

1 discipline decisions had to be approved by him,
2 would you have any way to dispute that?

3 A. The only dispute I would have is
4 that whenever -- as far as my dealings with Ideal
5 Towing and any disciplinary actions -- well, not
6 any disciplinary actions, but the majority would
7 be, you know, Tishja made the -- would decide
8 whatever action would be taken and I did not see
9 her, you know, consult, you know -- she would
10 make the decision and the decision would be done.

11 Q. And if Michael James said he had to
12 approve all those decisions, would you have any
13 way to dispute that?

14 A. No, I don't have any way to dispute
15 it.

16 Q. My understanding is that you worked
17 some hourly jobs prior to working at Ideal
18 Towing; is that correct?

19 A. Yes.

20 Q. Why did you switch from an hourly
21 position to a commission-based position?

22 A. When I first entered into
23 commission-based work I was laid off of a job
24 that was hourly and I fell into commission-based
25 work. After a few commission-based jobs, when I

1 got to IHOP, even that was mostly a
2 commission-based job and I was working mostly off
3 of tips and I was only getting \$2.83 an hour, so,
4 you know, it was all very similar in a sense that
5 you never know what you were going to make.

6 Q. Okay. You testified that there are
7 different ways that damages that were done to
8 vehicles could be paid for by the driver?

9 A. Yeah, they do their -- yes, I did.

10 Q. So you did not have to pay the
11 damages all up front?

12 A. Not my experience. I can't say the
13 same for any other driver though.

14 Q. So in other words, you were
15 responsible for the damages but the company would
16 allow you to pay it over time out of your checks?

17 A. Yes.

18 Q. Isn't it true that you got to
19 choose what schedule that you wanted to work when
20 you began working for Ideal Towing?

21 A. No.

22 Q. You did not let them know what
23 hours you could work?

24 A. You might be able to tell them just
25 like with any other job, you know, when you are

1 available and if your availability does not suit
2 the company, you know, it is what it is. That is
3 with anything, but all new drivers start off on
4 night shift.

5 Q. And at some point while you worked
6 at Ideal did your shift change?

7 A. Yes.

8 Q. When did that change?

9 A. I believe it happened a few months
10 after I started.

11 Q. And why did that change happen?

12 A. I requested day shift and I waited
13 for an opening. I believe either somebody had
14 quit or was let go and a position opened up for
15 day shift.

16 Q. Why did you request day shift?

17 A. I was just ready for day shift.

18 Q. When did you request day shift?

19 A. I believe that it was a few months
20 after I was working. I was working there for a
21 little bit.

22 Q. Did you ever have an issue with
23 another driver?

24 MR. BENJAMIN: Objection to form.

25 THE WITNESS: I mean, nothing

1 major, nothing serious.

2 BY MR. MAHONEY:

3 Q. Anything that required mediation?

4 A. With another driver?

5 Q. Yes.

6 A. I don't think so. Not with another
7 driver.

8 Q. How about with staff?

9 A. Oh, yeah, the manager, Kelly.

10 Q. Were there any other managers you
11 had an issue with?

12 A. Nothing that required mediation.

13 Q. And when you had an issue with
14 Kelly, Tishja mediated it?

15 A. I believe so. To be honest, I am
16 not quite sure how that was resolved, you know.
17 Personality clashes. But everybody is adults, so
18 you do what you got to do.

19 Q. So as you sit here today, you don't
20 know if Tishja helped you resolve that issue?

21 A. I can't be certain.

22 Q. What issues are you aware of that
23 Tishja mediated --

24 A. As far --

25 Q. -- between driver and driver?

1 A. Well, I did not have any issues
2 with any other driver --

3 Q. How about between --

4 A. -- that needed mediation.

5 Q. Okay. How about between driver and
6 staff?

7 A. Like, I could only speak for
8 myself.

9 Q. And which ones that you can speak
10 towards did Tishja mediate?

11 A. For me?

12 Q. At all.

13 A. Like, you know, when the manager
14 wrote me up for something, like, I don't remember
15 what it was. I know that I was written up for
16 something and it was completely ridiculous to me
17 and I took it to Tishja and, you know, she made
18 me feel much better about the situation, you
19 know. I felt it to be over on my end.

20 Q. Did she discipline the manager, to
21 your knowledge?

22 A. To my knowledge, no, but I don't
23 believe the write-up stood after the meeting with
24 her and I.

25 Q. So when you get a write-up, what

1 does the write-up entail discipline-wise? Does
2 it just stay on your record?

3 A. I suppose. I don't know. You
4 know, you get a write-up you did something wrong
5 or somebody is accusing you of -- the manager is
6 accusing you of doing something wrong. Where it
7 goes from there, I never really paid attention to
8 the system if it was, you know, first one verbal,
9 second one written, third one, you know, it was
10 just -- the write-up itself was ludicrous to me.
11 I forget what it was for, but it just seemed
12 ridiculous, so I did not even pay any attention
13 to what it meant. It just was completely
14 ridiculous to me.

15 Q. Okay. I understand. Do you know
16 if that write-up was taken out of your record?

17 A. I believe -- I felt like it was
18 after meeting with Tishja, you know, like she
19 made me feel better about the situation, so --
20 but then again, at the time it did not really --
21 like, to me, I was still working, so it did not
22 matter if it stood or didn't.

23 Q. Were there any other conflicts that
24 you know that Tishja mediated?

25 A. Between, like, staff -- myself and

1 staff or anything, or just any issues?

2 Q. Any dispute between a driver and a
3 driver or a driver and staff.

4 A. I am sure she did. There were
5 plenty of arguments between drivers and
6 management or in some cases maybe driver and
7 driver. But me minding my own business, I did
8 not, you know, follow up to see what happened or
9 whatever, so -- as a matter of fact. I know
10 there were other incidents but for me to be able
11 to speak on it, the details of any kind, I can't.

12 Q. Like, do you know the drivers that
13 were involved?

14 A. You know, every -- about 85 to 90
15 percent of the drivers at one point or another
16 had some type of argument, cursing or screaming
17 match, with the manager, so, you know.

18 Q. And you don't know if the managers
19 were disciplined for -- as a result of these
20 mediations that you say occurred?

21 A. I mean, I can't speak for certain.
22 I doubt that he was, like, disciplined, do you
23 know what I mean? But, you know, I mean, people
24 did not like him, you know, and he did not seem
25 to like anybody so there was conflict.

1 Q. Okay.

2 A. And when there was conflict you go
3 to Tishja, you know, and she had a way of making
4 everybody feel better.

5 Q. Okay. What were your off days at
6 Ideal at every time period?

7 A. When I first started the first
8 couple of months I did not take an off day at
9 all. Then I believe my off day was --

10 Q. That is when you were working night
11 shift?

12 A. That is when I was working night
13 shift. I did not take an off day. My first
14 couple of months, maybe a day here and there, but
15 nothing, you know, like, official. And that was
16 by my choice, but eventually I did start taking
17 an off day. I know at one point my off day was
18 on Friday and I believe it switched from there
19 but I can't be certain. I know the only off day
20 I really ever wanted was Sunday and I never got
21 it, so I know at one point it was Friday.

22 Q. Were you ever disciplined for
23 taking your off days by choice?

24 A. By not showing up to work or
25 something? I do not understand what you mean.

1 Q. You said that you had a day here or
2 there in the first couple of months where you
3 took the day off by choice. Did you testify to
4 that or not?

5 A. I am saying -- what I said was my
6 first couple of months I did take an off day, a
7 scheduled off day. There were a day here and
8 there where I may have had off in those first
9 couple of months and I worked all seven days of
10 the week by choice those first two months. So I
11 mean --

12 Q. Like, I am sorry for interrupting
13 you, but my question was: Were you disciplined
14 when you took those off days by choice?

15 A. No, because I had communication
16 with them and I know that they understood how
17 much I had been working.

18 Q. Did you ever have sick days?

19 A. Through my course of time of
20 employment with Ideal, I am sure I have had a day
21 or two. I ain't sick that often though.

22 Q. How about holidays?

23 A. No.

24 Q. So you worked Christmas?

25 A. Yes. I -- did I work -- I worked

1 Thanksgiving too. I think 2000.

2 MR. BENJAMIN: Don't think out loud
3 it makes for a messy transcript.

4 THE WITNESS: I'm sorry. I did not
5 think about that. I am -- yeah, I worked
6 most holidays.

7 BY MR. MAHONEY:

8 Q. Most holidays or all holidays?

9 A. Most.

10 Q. Which holidays did you not work?

11 A. I believe I did not work a
12 Thanksgiving.

13 Q. How many sick days did you take in
14 total?

15 A. I don't know. It could not have
16 been more than three.

17 Q. How many off days did you take
18 total?

19 A. Oh, I don't know. Oh, I don't
20 know. I cannot be sure of that. I know not
21 many.

22 Q. How did you keep track of the tows
23 that you performed?

24 A. We had a yellow sheet that we would
25 record our calls on, the date, location, call

1 number, tow destination and we would record them
2 daily on the sheet.

3 Q. Did you also have sign-in sheets
4 that you used when you came to work?

5 A. Later on they had a punch clock
6 time card.

7 Q. You say later on. Do you know what
8 year?

9 A. It either started late 2015 or very
10 early 2016. I am not certain.

11 Q. So to your knowledge there were no
12 time sheets?

13 A. Like sign-in?

14 Q. Yes.

15 A. No, not to my knowledge.

16 Q. Now, I asked you something about
17 this earlier, but I want to be a little bit more
18 specific. What was the average number of calls
19 that you did in 2015 specifically?

20 A. For the whole year?

21 Q. Yes.

22 A. I can't even -- I would say I
23 probably -- I can't say for the whole year.

24 Q. Okay. While you were working day
25 shift?

1 A. I worked day shift for part of
2 2015, which means that I would have to do more
3 calls during the day shift than at the time that
4 I worked at night shift, but I would average --
5 what I would like to do for myself every day
6 would be ten calls a day. If I did ten calls a
7 day, I would be good. So I wanted to average 60
8 to 70 calls a week, which I would either do or
9 fall short by five to ten, you know, so...

10 Q. So you have a range?

11 A. I don't know the math for that,
12 but, you know --

13 Q. So you are saying if you want to do
14 60 and you fell short by ten, that means that it
15 would be 50 on the low end?

16 A. Yeah, but then there may be weeks
17 where I might do 65, 70, you know, so...

18 Q. So you can't give an average -- can
19 you give a range?

20 MR. BENJAMIN: I think that he just
21 did.

22 THE WITNESS: Yes, that is the best
23 that I could -- I wanted my check to look a
24 certain way every week, and each week I kind
25 of knew what I had to do to get it or what I

1 would like to do to get it, you know.

2 BY MR. MAHONEY:

3 Q. From June 2015 until January 2016
4 what was the least amount of tows you performed
5 in a day?

6 A. The least amount? Like, one. I
7 don't think that I had any zero days. I might
8 have, but for me it would be one.

9 Q. And what would you do on those days
10 while waiting?

11 A. Most of the time I waited for a
12 call I would be in my truck on my phone just, you
13 know, posted up somewhere convenient to the
14 highways or the areas in our territory that I
15 thought would be the best, you know, but -- so
16 mostly just sit and wait in the truck.

17 Q. Did you ever wait at your house?

18 A. Yeah, there were times I waited at
19 my house.

20 Q. Did you pay for your own uniform
21 while you worked at Ideal Towing?

22 A. It was like a rental. Rental fee,
23 cleaning fee.

24 Q. Do you have any skills as a
25 mechanic whatsoever?

1 A. No.

2 Q. Have you ever performed light
3 service for friends not through Ideal Towing?

4 A. Not through Ideal Towing?

5 Q. Yes.

6 A. In my own personal vehicle I used
7 to do light service out of my own personal
8 vehicle, so, yes.

9 Q. Okay. What years did you do that?

10 A. 2011 through -- 2011 through '13, I
11 believe.

12 Q. What was your personal vehicle?

13 A. It was a Mazda Tribute.

14 Q. Have you ever privately performed
15 towing services for friends outside of Ideal
16 Towing?

17 A. No.

18 Q. Did you ever charge for the light
19 service that you performed out of your personal
20 vehicle?

21 A. Oh, yeah.

22 Q. How much?

23 A. I mean, it depends on the person
24 and the situation and the job.

25 Q. What is the most amount you ever

1 charged somebody?

2 A. Like \$100.

3 Q. What is the least amount you ever
4 charged?

5 A. Like five bucks and a cigarette or
6 something, like, you know, when they are down on
7 their luck.

8 Q. And do you know what the average
9 cost would be?

10 A. I believe the average cost would be
11 anywhere between \$50 to \$75.

12 Q. How did people know that you could
13 perform light service?

14 A. I had a sticker on the side of my
15 vehicle that said roadside assistance and I had a
16 big bright yellow vest.

17 Q. Where did you get those things?

18 A. From Auto Rescue, a company I
19 worked for. Actually I was a contractor driver
20 with them?

21 Q. During those same years?

22 A. Part of it.

23 Q. Okay. Do you still own that
24 sticker and vest?

25 A. No.

1 Q. When did you lose it?

2 A. A couple of years, a few years ago,
3 I stopped using it and lost track of it. Well, I
4 used the vest until I had to get a new one until
5 it wore out. But the stickers, I don't know.

6 Q. Do you know what year you lost the
7 sticker?

8 A. Actually you know what, I turned
9 them back in when I stopped working for Auto
10 Rescue.

11 Q. Do you know what year that was?

12 A. Late 2012.

13 Q. The sticker and the vest you turned
14 in?

15 A. No, just the sticker. I kept the
16 vest. The vest was just a basic safety vest
17 that -- it did not have a local insignia on it.

18 Q. So between late '12 and 2013 when
19 you performed light service out of your personal
20 vehicle, how did people know that you could do
21 light service?

22 A. The calls were sent to me through a
23 dispatching app that I downloaded on my phone
24 from the company, Auto Rescue, and they would
25 send me calls. Now, for any jobs that I did on

1 my own without Auto Rescue, the people could just
2 see because I had a big signs on my truck that
3 said roadside assistance.

4 Q. And I am saying after you turned in
5 the sticker.

6 A. Oh, I mean, then I -- oh, I worked
7 for a different company for a little bit called
8 Quick Pick and they had signs and stickers on --
9 maybe not stickers that you put on the side of
10 your vehicle to let them know that you do
11 roadside services.

12 Q. And my question is: Did you ever
13 privately perform these services and did not pay
14 a company like Quick Pick or Auto Rescue?

15 A. Well, with Auto Rescue and Quick
16 Pick I was an actual independent contractor, so I
17 used all of my own vehicles, like my own vehicle,
18 my own tools, my own time, you know. I worked
19 like an Uber almost in the sense that, yeah, I am
20 going to take lunch. I am not available. Like I
21 am going home, going to a movie or whatever. And
22 I used all my own vehicles or whatever and I was
23 only required to pay them from the calls that
24 they dispatched to me and actually they got the
25 money before I did so they would pay me my

1 percentage. Any other call that I did while I
2 was out that was personal was mine to keep. They
3 had no say in that.

4 Q. So when you started working at
5 Ideal Towing you had significant experience as an
6 independent contractor?

7 MR. BENJAMIN: Object to the form.

8 THE WITNESS: What I thought in my
9 understanding. See, prior to me working
10 with Auto Rescue I had never been an
11 independent contractor before so I did not
12 know what an independent contractor meant,
13 you know, I was just -- this guy said, you
14 know, that he was going to let me work and
15 earn, so --

16 BY MR. MAHONEY:

17 Q. Now, I understand that you might
18 have discussed this a little bit in your first
19 deposition, but how long did you work for Auto
20 Rescue?

21 A. I worked for Auto Rescue from
22 September 2011 to just approximately November
23 2012. And at one point I was working for Auto
24 Rescue and Quick Pick both.

25 Q. And what years did you work at

1 Quick Pick?

2 A. Just for -- I was only there for a
3 couple of months and that was 2012.

4 (Defendants' Exhibit 3, Form 1099,
5 was marked for identification.)

6 BY MR. MAHONEY:

7 Q. I have here what is marked as
8 Defendants' Exhibit Number 3.

9 A. Before we get into that I need to
10 take a break.

11 MR. BENJAMIN: Sure, is that fine
12 with you?

13 MR. MAHONEY: Yes, that is fine.

14 (Recess.)

15 BY MR. MAHONEY:

16 Q. I would like to hand you what has
17 been marked as Defendants' Exhibit 3.

18 (Tendered.)

19 Take a look at that for a moment.

20 A. Okay.

21 Q. Do you recognize that?

22 A. Yes.

23 Q. What is it?

24 A. It appears to be a 1099 form.

25 Q. Did you receive one of these from

1 Ideal Towing?

2 A. Yes.

3 Q. When did you receive it?

4 A. 2015.

5 Q. Can you take a look at box number
6 7, non-employee compensation.

7 A. Uh-huh.

8 Q. Do you dispute that the dollar
9 amount there is what you received from Ideal
10 Towing in 2014?

11 A. No, I don't dispute that. That was
12 what I received, right?

13 Q. Correct.

14 A. No, I don't dispute that.

15 Q. Okay. Have you ever had a tax
16 identification number?

17 A. A tax ID? Is that different from
18 EIN?

19 Q. Not necessarily. Have you ever had
20 an EIN?

21 A. I did, but I never used it.

22 Q. When did you have one?

23 A. I think that I set that up in
24 2000 -- I think that it was 2007, 2008. I am not
25 certain.

1 Q. And what did you set it up for?

2 A. I was going to start a t-shirt
3 company.

4 Q. Did you consider yourself an
5 entrepreneur?

6 A. No, because I had not made any
7 money as an entrepreneur.

8 Q. How about when you were working at
9 Quick Pick?

10 A. Well, Quick Pick and Auto Rescue, I
11 guess, technically I could be considered an
12 entrepreneur even though my business was reliant
13 on them, so I did not -- you know, even that I
14 had all my own experiences and equipment and
15 stuff I did not feel like an entrepreneur,
16 although technically at that time I was.

17 (Defendants' Exhibit 4, Form 1099,
18 was marked for identification.)

19 BY MR. MAHONEY:

20 Q. Okay. I have here what is marked
21 as Defendants' Exhibit 4. (Tendered.)

22 And take a moment to look at that.

23 A. I have not gotten it. Where is it?

24 Q. (Tendered.)

25 A. Okay.

1 Q. Do you recognize that document?

2 A. This looks familiar.

3 Q. What is it?

4 A. It looks like a 1099 form.

5 Q. Did you receive this document from
6 Ideal Towing?

7 A. I may have. I think when this came
8 I had moved, so I did not receive it in the mail,
9 but it appears to be a 1099 form.

10 Q. Do you know when you would have
11 received it?

12 A. I am guessing early 2016.

13 Q. Can you look at the box number 7?

14 A. Yeah.

15 Q. Can you tell me if the dollar
16 amount there is the correct amount of monies you
17 received from Ideal Towing in 2015?

18 A. I can't be certain, but it seems as
19 though it could be like about that.

20 Q. Okay. Do you have any reason to
21 dispute that that is the amount that you actually
22 received in 2015?

23 A. Do I have any reason to dispute it?

24 Q. Yeah, to dispute that that is the
25 actual dollar amount that you received in 2015.

1 A. Yeah, I think that I have reason to
2 dispute it.

3 Q. Okay. Did you receive more or less
4 than that amount?

5 A. To be honest with you, I am not
6 certain. I saved a great deal of my check stubs
7 from that year, but not all of them and with
8 the -- just the way certain things were being
9 conducted, like, it could be what I received or
10 it could not be. I can't -- you know, I can't be
11 certain.

12 Q. Okay. Do you believe that you
13 received more than that?

14 A. I may have. I may have or I may
15 have received less. Just going off of what is on
16 the paper requires like a trust that I have to
17 trust that that information put on there is
18 accurate. And right now I can't say that I have
19 that trust. It could be, but also it could not
20 be for me. Do you know what I am saying?

21 Q. Yes.

22 A. I can't be certain.

23 Q. I understand that. So my question
24 is: What do you base your dispute on other than
25 just lack of trust? Do you have any factual

1 basis for believing that you received --

2 A. No, I don't.

3 Q. -- more or less? Okay. What type
4 of vehicles did you tow out of state?

5 A. I know one was a -- just regular
6 passenger vehicle. I mean, you know, just
7 regular -- just regular passenger vehicle.

8 Q. Was it a car, truck, van, do you
9 know?

10 A. One was a car and the other one, I
11 believe, was an SUV.

12 Q. How were you paid for those jobs?

13 A. The standard way that we were paid
14 at the time.

15 Q. And what would that be?

16 A. Well, you know, we got paid
17 different ways, they switched it up a couple of
18 times. I know one for certain I got a 30 percent
19 of the total thing and I think that we were going
20 off of mileage at the time, so I forget the
21 formula for it. We got paid, you know, a certain
22 amount after five miles and then --

23 Q. Did this apply to one of your
24 out-of-state jobs?

25 A. Yes.

1 Q. So you got paid by the mile?

2 A. Yeah, at that time. One time I
3 know for certain and the other time I am not
4 certain how I got paid.

5 Q. Was this in 2015?

6 A. Yes, it had to be.

7 Q. Do you know what month?

8 A. No, I don't.

9 Q. Were you tipped for any of the tow
10 jobs you performed?

11 A. Yes, sir.

12 Q. How often?

13 A. I would say about a third of the
14 time.

15 Q. What is the largest tip you ever
16 received?

17 A. Oh, man, I received a -- I received
18 over \$100 from a customer once.

19 Q. And what would you say is the
20 average amount that you were tipped?

21 A. You know, \$5 or \$10, average about
22 \$10, yeah.

23 Q. And did you ever disclose the
24 amount that you were tipped to Ideal Towing?

25 A. No.

1 Q. And did you ever keep track of how
2 much in tips you got?

3 A. Not really.

4 Q. For instance, could you give an
5 estimate of how many tips -- how much in tips you
6 received in 2015?

7 A. No, not for the whole year.

8 Q. Could you do it for any time
9 period?

10 A. I would say in a week I might have
11 made -- I would make about -- in a week's time I
12 would say anywhere between maybe 50 to a little
13 over \$100 a week in tips.

14 Q. And you testified that you --
15 didn't you testify that you performed about 60
16 tows per week?

17 A. Yes, that is what I was aiming for
18 on a weekly -- it may fall short or sometimes it
19 may run over.

20 Q. Okay. Did you ever deliver any
21 products from Ideal Towing out of state?

22 A. I don't know what you mean.

23 Q. So you delivered tow vehicles out
24 of state, correct?

25 A. Uh-huh.

1 Q. Did you ever deliver anything that
2 was Ideal Towing property out of state?

3 A. No, not me.

4 Q. Were you allowed to sell anything
5 while you worked at Ideal Towing?

6 A. In the truck?

7 Q. Yes.

8 A. I mean, I don't know of any
9 specific rule, but I did not.

10 Q. Did Ideal Towing ever ask you to
11 sell anything out of the truck?

12 A. Ideal Towing, no.

13 Q. Okay. Did you ever keep any drugs
14 on you while you were in the truck?

15 A. I had some marijuana on me once.

16 Q. One time?

17 A. Yes, sir.

18 Q. For the entire shift?

19 A. No, not for the entire shift.

20 Well, for the shift I worked, yes.

21 Q. Never had cocaine on you?

22 A. No.

23 MR. BENJAMIN: And I am going to
24 instruct him not to answer any more
25 questions about any kind of drugs because I

1 see no relevance to it whatsoever. If you
2 can tell me why it's reasonable to go into
3 that, we will possibly reevaluate that.
4 This case is about an independent contractor
5 versus an employee.

6 MR. MAHONEY: I understand that you
7 guys probably discussed some things at the
8 last deposition and I would like to go over
9 them again just to be clear. So first did
10 you have an opportunity to speak about -- to
11 your employee about read and signing?

12 MR. BENJAMIN: Well, we have not
13 ordered the transcript. I would say that
14 for the moment we will reserve signature.

15 MR. MAHONEY: Okay. And do we
16 agree to reserve all objections except as to
17 form and responsiveness of the witness until
18 first use?

19 MR. BENJAMIN: Well, yes, what the
20 rules generally say -- I have objected when
21 I thought was necessary today.

22 MR. MAHONEY: I understand. All
23 right. So can we agree that, you know, if
24 Defendants which I am sure you know is very
25 unlikely -- if Defendant wanted to use that

1 information that he testified about at
2 trial. You could object then.

3 MR. BENJAMIN: Well, certainly we
4 would object then and any other use of it?

5 MR. MAHONEY: I understand that.
6 So do you still plan on instructing him not
7 to answer the question?

8 MR. BENJAMIN: Yes, I think that
9 it's beyond the scope of Rule 26. It's not
10 even remotely close.

11 MR. MAHONEY: Okay. I don't
12 believe that the witness has the ability to
13 not answer a question at a deposition in
14 this form based on a regular objection as to
15 relevance. And on that basis, I am going to
16 instruct him to answer.

17 MR. BENJAMIN: Okay. I am going to
18 instruct him not to, but I -- explain to me
19 why this is an appropriate topic because it
20 is not correct that in any deposition any
21 topic of any crime is fair game and it's
22 not.

23 MR. MAHONEY: So the discussion you
24 want to have right now will needlessly make
25 this deposition very long. It's not the

1 appropriate time or place to have this
2 discussion. Your objection is noted for the
3 record and you can always raise it whenever
4 the information is sought to be used but I
5 don't think it's appropriate to instruct the
6 witness not to answer a question based on a
7 general objection as to relevance.

8 MR. BENJAMIN: I think that that is
9 not correct. And I am instructing him not
10 to answer because, look, I can reevaluate my
11 position if you explain any way, shape or
12 form in an FSLA case why the questions you
13 are asking about drug use have any bearing.

14 MR. MAHONEY: That explanation is
15 not necessary. The only explanation that is
16 necessary is that he does not have the
17 ability to refuse to answer questions.

18 MR. BENJAMIN: Yes, he does.

19 MR. MAHONEY: Based on a general
20 objection?

21 MR. BENJAMIN: He does not -- it's
22 not a general objection. You cannot ask
23 him these questions.

24 MR. MAHONEY: The rules for this
25 deposition are the same that they would be

1 at trial.

2 MR. BENJAMIN: Correct.

3 MR. MAHONEY: Do you contend that
4 you would be able to instruct the witness
5 not to answer when he is on the stand or
6 would you object to the judge.

7 MR. BENJAMIN: I would object to
8 the judge and get a ruling that it is unduly
9 prejudicial and has no relevance whatsoever.

10 MR. MAHONEY: I understand that.
11 Now, on the basis that the judge is not here
12 right now to grant your objection, I think
13 that the best thing to do is to allow the
14 witness to answer the question and then you
15 can remove it later based on an objection
16 that is ruled upon by a judge.

17 MR. BENJAMIN: I disagree. And I
18 am instructing him not to answer any
19 questions about drug use. And what I would
20 suggest is that you continue the deposition
21 on any other topics and then we can take
22 this up with the judge at the end of the
23 deposition or after the deposition.

24 MR. MAHONEY: I understand that. I
25 am trying to avoid having to reconvene this

1 deposition the third time. Today is the
2 last day of discovery. I want to avoid
3 discovery having to be reextended, and I
4 suggest that you allow the witness to answer
5 and then you can object to it when it's
6 intended to be used.

7 MR. BENJAMIN: Well, still, explain
8 to me how it's appropriate at all and I may
9 reconsider because, to me, it looks like
10 it's simply harassment. It's an attempt to
11 abuse him. It's an attempt to get him to
12 admit to committing crimes. None of those
13 things have any bearing on this case. None,
14 not remotely.

15 MR. MAHONEY: So are you objecting
16 based on him being subject to criminal
17 prosecution?

18 MR. BENJAMIN: It's always a
19 possibility. I don't know the answers to
20 these questions but what I am saying is
21 there is a scope of Rule 26 and you are not
22 remotely in it anymore and I am instructing
23 on that. If you want to call the judge, we
24 can do that and we will get a ruling and we
25 will obey what the judge says.

1 MR. MAHONEY: I think that we
2 should do that.

3 MR. BENJAMIN: My instruction now
4 is that this is inappropriate and I am not
5 allowing him to answer any questions about
6 drug use especially when you have not even
7 been able to tell me why this is reasonable.

8 MR. MAHONEY: I think it's relevant
9 to what other activities he could perform
10 while being an independent contractor. It's
11 that simple.

12 MR. BENJAMIN: Okay. Do you want
13 to continue and we will call the judge at
14 the end of the -- when you are done with
15 others or do you want to stop now and call?

16 MR. MAHONEY: I say that we should
17 stop now and call it.

18 MR. BENJAMIN: All right. Let's
19 take a break for a moment.

20 (Recess.)

21 MR. MAHONEY: Do you want to
22 restate your objection for the record based
23 on the last question?

24 MR. BENJAMIN: I am instructing my
25 client not to answer on numerous grounds.

1 One is he is asserting his Fifth Amendment
2 right against self-incrimination. And two
3 is that I think that it is beyond the scope
4 that is permitted by Rule 26. I think that
5 it is asked to harass and oppress and not
6 for any legitimate discovery purpose and on
7 all of those bases I am instructing my
8 client not to answer that question.

9 BY MR. MAHONEY:

10 Q. And can you respond?

11 A. No.

12 MR. BENJAMIN: We -- my client is
13 accepting my advice not to answer that
14 question on the grounds that -- as just
15 stated.

16 MR. MAHONEY: I would like him to
17 assert that he is raising his Fifth
18 Amendment privilege.

19 MR. BENJAMIN: Is that correct?

20 THE WITNESS: Yes, I am raising my
21 Fifth Amendment on that question.

22 BY MR. MAHONEY:

23 Q. Were you ever disciplined for
24 having marijuana in the truck by Ideal Towing?

25 MR. BENJAMIN: You can answer.

1 THE WITNESS: Yeah, I was talked to
2 about it.

3 BY MR. MAHONEY:

4 Q. How did Ideal find out that you had
5 marijuana in the truck?

6 A. I had a bag in the -- like a locked
7 compartment of the truck and it was in there. I
8 forgot I had it, but I left it in the truck. And
9 somebody went in the truck and I guess that they
10 were trying to see whose bag it was and that is
11 when they found it.

12 Q. Did you ever smoke while you were
13 in the truck?

14 A. No, I did not smoke weed in the
15 truck.

16 Q. Did you ever smoke weed outside of
17 the truck during your shift?

18 MR. BENJAMIN: I am going to object
19 and, again, assert Fifth Amendment right
20 against incrimination and because it's
21 wholly irrelevant and these questions are
22 asked for harassment purposes because they
23 have no legitimate discovery purpose. So I
24 am instructing him not to answer.

25 THE WITNESS: I plead my Fifth

1 Amendment right.

2 BY MR. MAHONEY:

3 Q. Did you ever go to work high?

4 MR. BENJAMIN: You can answer the
5 question.

6 THE WITNESS: No.

7 BY MR. MAHONEY:

8 Q. Did you ever leave work high?

9 A. No.

10 Q. What purpose did you have the
11 marijuana in the truck?

12 MR. BENJAMIN: I am going to also
13 instruct him not to answer. Same basis.

14 THE WITNESS: Yeah, I plead the
15 Fifth.

16 MR. MAHONEY: Okay. No further
17 questions.

18 MR. BENJAMIN: At present we are
19 not going to order, but I may have a
20 question.

21 I have no questions. We will read
22 and sign.

23 MR. MAHONEY: Okay. And at the
24 moment I don't know either. I have your
25 information and I will have the office call

1 you.

2 (Deposition adjourned at 12:20 p.m.)

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1 Notice Date: 6/15/17

2 Deposition Date: 5/19/17

3 Deponent: Brian Wynn (Vol. II)

4 Case Name: Jawanza Smith, et al.

5 v. Ideal Towing, LLC , et al.

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1 CERTIFICATE OF DEPONENT

2

3 I hereby certify that I have read and examined the
4 foregoing transcript, and the same is a true and
5 accurate record of the testimony given by me.

6 Any additions or corrections that I feel are
7 necessary, I will attach on a separate sheet of
8 paper to the original transcript.

9

10

Signature of Deponent

12

13 I hereby certify that the individual representing
14 himself/herself to be the above-named individual,
15 appeared before me this ____ day of _____,
16 2017, and executed the above certificate in my
17 presence.

18

19

NOTARY PUBLIC IN AND FOR

21

22

County Name

24

25 MY COMMISSION EXPIRES:

DISCLOSURE

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13 and Registered Professional Reporter
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1 STATE OF GEORGIA:

2 COUNTY OF FULTON:

3 I hereby certify that the foregoing
4 transcript was reported, as stated in the
5 caption, and the questions and answers thereto
6 were reduced to typewriting under my direction;
7 that the foregoing pages represent a true,
8 complete, and correct transcript of the evidence
9 given upon said hearing, and I further certify
10 that I am not of kin or counsel to the parties in
11 the case; am not in the employ of counsel for any
12 of said parties; nor am I in any way interested
13 in the result of said case.

14
15
16 *M. Susan DeCarlo*
17

18 M. Susan DeCarlo, Notary Public
19 and Registered Professional Reporter
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